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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,368	10/05/2005	Masayasu Miyazaki	0080-0233PUS1	3359
2292 7590 05/29/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER NICOLAS, FREDERICK C				
ART UNIT 3754		PAPER NUMBER		
NOTIFICATION DATE 05/29/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/526,368

Applicant(s)

MIYAZAKI ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date 3/05/7/05/4/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A: Figs. 1-4, claims 1-13, 18-19 in the reply filed on 2/23/2009 is acknowledged. The traversal is on the ground(s) that at least claim 1 is generic. This is found persuasive. Therefore, claim 1 has been considered generic to species A-V. Further, applicants argue that "restriction should never be required if the search and examination of an entire examination of an entire application can be made without serious burden". This is not found persuasive because Species A and R are clearly not related in terms of their modes of operation. For example, in the non-elected species of Figure 25, a piston is required, as evidenced in claim 17. Clearly, there exist unrelated features among the species of claimed invention, which will require a separate search area for each species and thus, impose a burden in search and examination for the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 14-17, 2—24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/23/2009.

Preliminary Amendment

3. The preliminary amendment filed on 3/3/2005 has been entered.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Takihara (SHO 49-07245).

Takihara discloses a backflow preventing plug as seen in Figure 3, which comprises a thin film resilient membrane (3) defining a flow path having an intake port (11) and an outlet port (2'), and a ball-shaped plug member (4) retained in the flow path in the resilient membrane and formed with a spherical sealing surface for restricting flow of fluid by coming into resilient contact with a middle portion of the resilient membrane as seen in Figure 2, the resilient membrane is formed of an elastic rubber member which can be expanded and deformed in a direction away from the plug member by a fluid pressure applied from the intake port as seen in Figure 3, the plug member has a spherical or an ellipsoidal shape as seen in Figures 2 and 3, an annular projection (where the ball seats in Figure 2 forms the annular projection).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takihara (SHO 49-07245) in view of Mack et al. 5,529,213.

Takihara has taught all the features of the claimed invention except that an outer mantle surrounding the container body. Mack et al. teach the use of an outer mantle (12) for an inner container (14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outer mantle of Mack et al. onto the device of Takihara, in order to provide a disposable inner container for the fluid material.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lunghetti 6,386,395, Matsumoto et al. 7,490,744, Kaufman 3,111,703, Sperna Weiland 6,357,630, Sperna Weiland 6,253,967, Poolman 5,887,753, Robinson 6,325,253, Paparello 1,987,156, Smith et al. 5,033,647, Debush 5,305,786, Gerber 5,836,484 and Gerber et al. 6,662,977 disclose other types of backflow preventing plug.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754